UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,845	01/29/2004	Yaniv Vakrat	5681-80700	2972

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EXAMINER
WILSON, YOLANDA L

ART UNIT	PAPER NUMBER
2113	

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Office Action Summary		10/767,845	VAKRAT ET AL.
		Examiner	Art Unit	
		Yolanda L. Wilson	2113	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>29 January 2004</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 08-06)   Office Action Summary   Part of Paper No./Mail Date 09162006

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims rejected under 35 U.S.C. 102(e) as being anticipated by Beardsley et al.

(US Publication Number 20030131285A1). As per claim 1, Beardsley et al. discloses

providing a suite of test programs on a server for execution by a plurality of said

computing devices that are coupled to said server on page 3, paragraph 0032; on page

4, paragraphs 0042,0043; distributing different one of said test programs from said

server to said computing devices for concurrent execution thereon by said computing

devices on page 3, paragraph 0033; on page 4, paragraphs 0042-0044; receiving

messages from said computing devices upon completion of respective said different

ones of said test programs on page 3, paragraph 0033; on page 4, paragraphs 0042-

0044; and responsively to said messages, iterating said step of distributing until all of

said test programs in said suite have been executed on page 4, paragraphs 0042-045.

3.   As per claims 4,11,17,22,28,32, Beardsley et al. discloses dynamically coupling a

new computing device to said server; and reallocating said test programs to said

computing devices and said new computing device on page 5, paragraph 0052.

4.   As per claims 5,12,29,33, Beardsley et al. discloses dynamically detaching one

of said computing devices from said server; and marking unexecuted ones of said test

programs that were distributed to said one computing device as not run on page 5,

paragraph 0052. It is inherent if the computer is detached, the programs will not run on

that computer.

5.   As per claims 6,13, Beardsley et al. discloses wherein said step of distributing

comprises removing said different one of said test programs from a stack on page 5,

paragraph 0052.

6.   As per claims 7,14, Beardsley et al. discloses wherein said step of distributing

comprises assigning said different ones of said test programs in groups comprising a

plurality of said test programs so as to minimize a completion time of said suite on page

5, paragraphs 0048-0049.

7.   As per claim 8, Beardsley et al. discloses accessing a suite of test programs on a

server for execution by a plurality of said computing devices that are coupled to said

server on page 3, paragraph 0032; on page 4, paragraphs 0042,0043; distributing

different one of said test programs from said server to said computing devices for

concurrent execution thereon by said computing devices on page 3, paragraph 0033; on

page 4, paragraphs 0042-0044; receiving messages from said computing devices upon

completion of respective said different ones of said test programs on page 3, paragraph

0033; on page 4, paragraphs 0042-0044; and responsively to said messages, iterating

said step of distributing until all of said test programs in said suite have been executed

on page 4, paragraphs 0042-045.

8.   As per claim 15, Beardsley et al. discloses providing a suite of test programs on

a server for execution by a plurality of said computing devices that are coupled to said

server on page 3, paragraph 0032; on page 4, paragraphs 0042,0043; assigning a

respective unique identifier to each of said plurality of said computing devices, for use in

communicating with said server on page 3, paragraphs 0031-0032; making respective

allocations comprising different ones of said test programs for said computing devices

on page 4, paragraphs 0042-0045; on page 3, paragraphs 0031-0032; downloading

'said allocations from distributing different one of said test programs from said server for

respective execution by said computing devices coupled thereto, so that at least first

and second computing devices among said plurality execute different first and second

test programs from said suite substantially simultaneously on page 3, paragraph 0033;

on page 4, paragraphs 0042-0044; receiving messages at said server from said

computing devices with respect to said execution of said test programs, each of said

messages containing said respective unique identifier on page 3, paragraph 0033; on

page 4, paragraphs 0042-0044; and responsively to said messages, downloading at

least another of said test programs to a respective one of said computing devices on

page 4, paragraphs 0042-045.

9.   As per claims 16,21, Beardsley et al. discloses wherein said step of making

respective allocations is performed so as to minimize a completion time of said suite of

test programs on page 5, paragraphs 0048-0049.

10.   As per claims 19,23, Beardsley et al. discloses detaching an attached one of said

computing devices from said server; and marking unexecuted test of said respective

allocations of said attached one computing device as not run on page 5, paragraph

0052. It is inherent if the computer is detached, the programs will not run on that

computer.

11.   As per claim 20, Beardsley et al. discloses accessing a suite of test programs on

a server for execution by a plurality of said computing devices that are coupled to said

server on page 3, paragraph 0032; on page 4, paragraphs 0042,0043; assigning a

respective unique identifier to each of said plurality of said computing devices, for use in

communicating with said server on page 3, paragraphs 0031-0032; making respective

allocations comprising different ones of said test programs for said computing devices

on page 4, paragraphs 0042-0045; on page 3, paragraphs 0031-0032; downloading

said allocations from distributing different one of said test programs from said server for

respective execution by said computing devices coupled thereto, so that at least first

and second computing devices among said plurality execute different first and second

test programs from said suite substantially simultaneously on page 3, paragraph 0033;

on page 4, paragraphs 0042-0044; receiving messages at said server from said

computing devices with respect to said execution of said test programs, each of said

messages containing said respective unique identifier on page 3, paragraph 0033; on

page 4, paragraphs 0042-0044; and responsively to said messages, downloading at

least another of said test programs to a respective one of said computing devices on

page 4, paragraphs 0042-045.

12.   As per claim 25, Beardsley et al. discloses a communication interface for

coupling a plurality of said computing devices thereto in Figure 2; on page 3,

paragraphs 0031-0032; and a processor having instructions to access a suite of test

programs for execution by said computing devices that are coupled to said server, and

to distribute at least a portion of different ones of said test programs via said

communication interface to respective ones of said computing devices for concurrent

execution thereof, said processor having further instructions to receive messages via

said communication interface from said computing devices indicating completion of said

test programs, and responsively to said messages, to distribute remaining ones of said

test programs to said computing devices for execution thereof iteratively until all of said

test programs in said suite have been executed on page 3, paragraphs 0031-0033; on

page 4, paragraphs 0042-0045.

13.   As per claim 30, Beardsley et al. discloses assign said different ones of said test

programs in groups comprising a plurality of said test programs so as to minimize a

completion time of said suite on page 5, paragraphs 0048-0049.

14.   As per claim 21, Beardsley et al. discloses a communication interface for

coupling a plurality of said computing devices thereto on page 3, paragraphs 0031-

0032; in Figure 2; and a processor having instructions to access a suite of test

programs on a server for execution by a plurality of said computing devices that are

coupled to said server on page 3, paragraph 0032; on page 4, paragraphs 0042,0043;

to assign a respective unique identifier to each of said plurality of said computing

devices, for use in communicating with said server on page 3, paragraphs 0031-0032;

to make respective allocations comprising different ones of said test programs for said

computing devices on page 4, paragraphs 0042-0045; on page 3, paragraphs 0031-

0032; to download said allocations from distributing different one of said test programs

from said server for respective execution by said computing devices coupled thereto, so

that at least first and second computing devices among said plurality execute different

first and second test programs from said suite substantially simultaneously on page 3,

paragraph 0033; on page 4, paragraphs 0042-0044; to receive messages at said server

from said computing devices with respect to said execution of said test programs, each

of said messages containing said respective unique identifier on page 3, paragraph

0033; on page 4, paragraphs 0042-0044; and responsively to said messages,

downloading at least another of said test programs to a respective one of said

computing devices on page 4, paragraphs 0042-045.

Claim Rejections - 35 USC § 103

15.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

16.   Claims 2,3,9,10,24,26,34 rejected under 35 U.S.C. 103(a) as being unpatentable

over Beardsley et al. in view of Topley (J2ME in a Nutshell). As per claims 2,9,26,

Beardsley et al. fail to explicitly state wherein said test programs are distributed as JAR

files and JAD files.

Topley discloses this limitation on page 4, under the heading 9.1.4.

Accordingly, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have said test programs distributed as JAR files and

JAD files. A person of ordinary skill in the art would have been motivated to have said

test programs distributed as JAR files and JAD files because the JAD and JAR files are

being tested in the testing process.

17. As per claims 3,10,27, Beardsley et al. fails to explicitly state wherein said JAD

files are constructed responsively to said messages.

Topley discloses this limitation on page 4, under the heading 9.1.4.

Accordingly, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have said JAD files constructed responsively to said

messages. A person of ordinary skill in the art would have been motivated to have said

JAD files constructed responsively to said messages because the JAD and JAR files

are being tested in the testing process.

18. As per claims 24,34, Beardsley et al. fails to explicitly state wherein said

computing devices comprise MIDP-compliant devices, and wherein said test programs

comprise MIDlets, which are packaged in respective JAD files and JAR files, and

wherein allocating said test programs comprises downloading said JAD files and said

JAR files to said MIDP-compliant devices.

Topley discloses this limitation on page 3, under the bin heading; on page 5,

under the heading 9.1.4.

Accordingly, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have said computing devices comprise MIDP-compliant

devices, and wherein said test programs comprise MIDlets, which are packaged in

respective JAD files and JAR files, and wherein allocating said test programs comprises

downloading said JAD files and said JAR files to said MIDP-compliant devices. A

person of ordinary skill in the art would have been motivated to have said computing

devices comprise MIDP-compliant devices, and wherein said test programs comprise

MIDlets, which are packaged in respective JAD files and JAR files, and wherein

allocating said test programs comprises downloading said JAD files and said JAR files

to said MIDP-compliant devices because the MIDlets allows for testing on devices

regardless of location.

Double Patenting

19.   The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees.   A nonstatutory
obviousness-type double patenting rejection is appropriate where the conflicting claims
are not identical, but at least one examined application claim is not patentably distinct
from the reference claim(s) because the examined application claim is either anticipated
by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140
F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29
USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.
1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422
F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163
USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d)
may be used to overcome an actual or provisional rejection based on a nonstatutory
double patenting ground provided the conflicting application or patent either is shown to
be commonly owned with this application, or claims an invention made as a result of
activities undertaken within the scope of a joint research agreement.
        Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

20.   Claims 15,20,31provisionally rejected on the ground of nonstatutory

obviousness-type double patenting as being unpatentable over claims 1,8,15 of

copending Application No. 10/767850. Although the conflicting claims are not identical,

they are not patentably distinct from each other because for claim 15 of the instant

application the claim contains the limitation 'making respective allocations comprising

different ones of said test programs for said computing devices'. The 'different ones of

said test programs' is seen in the 'downloading...' limitation of '850; therefore, it would

be obvious that the different programs are the programs that are being found to execute

on the computing devices.

A variation of the limitation listed above in the instant application is included in

claims 20 and 31. The rationale listed above applies to those claims as well.

This is a provisional obviousness-type double patenting rejection because the

conflicting claims have not in fact been patented.

21.   Claims 15,20,31 of this application conflict with claims 1,8,15 of Application No.

10/767850. 37 CFR 1.78(b) provides that when two or more applications filed by the

same applicant contain conflicting claims, elimination of such claims from all but one

application may be required in the absence of good and sufficient reason for their

retention during pendency in more than one application. Applicant is required to either

cancel the conflicting claims from all but one application or maintain a clear line of

demarcation between the applications. See MPEP § 822.

Claim Rejections - 35 USC § 101

22.   35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
conditions and requirements of this title.

23.   Claims 8-14,20-24 are rejected under 35 U.S.C. 101 because the claimed

invention is directed to non-statutory subject matter. These claims are computer

program product claims which state having a computer-readable medium. As defined in

the specification in paragraph 0030, the computer-readable medium can be a

'transmission medium with or without a carrier wave upon which the signals are

modulated. For example, the transmission medium may includes a communications

network, such as the Internet.' This subject matter is non-statutory.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Yolanda L. Wilson whose telephone number is (571)

272-3653. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Yolanda L Wilson
Examiner
Art Unit 2113